



## Senate

General Assembly

**File No. 657**

February Session, 2004

Substitute Senate Bill No. 562

*Senate, April 26, 2004*

The Committee on Finance, Revenue and Bonding reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

### **AN ACT CONCERNING THE CONVERSION OF NONPROFIT HOSPITALS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-486a of the general statutes, as amended by  
2 section 2 of public act 03-73, is repealed and the following is  
3 substituted in lieu thereof (*Effective October 1, 2004*):

4 (a) No nonprofit hospital shall enter into an agreement to transfer a  
5 material amount of its assets or operations or a change in control of  
6 operations to a person that is organized or operated for profit without  
7 first having received approval of the agreement by the commissioner  
8 and the Attorney General pursuant to sections 19a-486 to 19a-486h,  
9 inclusive, as amended by this act, and pursuant to the Attorney  
10 General's authority under section 3-125. Any such agreement without  
11 the approval required by sections 19a-486 to 19a-486h, inclusive, as  
12 amended by this act, shall be void.

13 (b) Prior to any transaction described in subsection (a) of this  
14 section, the nonprofit hospital and the purchaser shall concurrently  
15 submit a letter of intent to the commissioner and the Attorney General  
16 by serving it on them by certified mail, return receipt requested, or  
17 delivering it by hand to each office. Such letter of intent shall contain:  
18 (1) The name and address of the nonprofit hospital; (2) the name and  
19 address of the purchaser; (3) a brief description of the terms of the  
20 proposed agreement; and (4) the estimated capital expenditure, cost or  
21 value associated with the proposed agreement. The letter of intent  
22 shall be subject to disclosure pursuant to section 1-210, as amended.

23 (c) The commissioner and the Attorney General shall review the  
24 letter of intent. The Attorney General shall determine whether the  
25 agreement requires approval pursuant to this chapter, taking into  
26 consideration both the amount of assets or operation or change in  
27 control involved in the current proposal and any previous transfers of  
28 assets, operations or control by the nonprofit hospital that, taken  
29 together with the current proposal, would transfer a material amount  
30 of assets or operation that results in a change in control to a person  
31 organized or operated for profit. If such approval is required, the  
32 commissioner and the Attorney General shall transmit to the purchaser  
33 and the nonprofit hospital an application form for approval pursuant  
34 to this chapter, unless the commissioner refuses to accept a filed or  
35 submitted letter of intent as provided in section 19a-639e, as amended.  
36 Such application form shall require the following information: (1) The  
37 name and address of the nonprofit hospital; (2) the name and address  
38 of the purchaser; (3) a description of the terms of the proposed  
39 agreement; (4) copies of all contracts, agreements and memoranda of  
40 understanding relating to the proposed agreement; (5) a fairness  
41 evaluation by an independent person who is an expert in such  
42 agreements, that includes an analysis of each of the criteria set forth in  
43 section 19a-486c, as amended by this act; (6) documentation that the  
44 nonprofit hospital exercised the due diligence required by subdivision  
45 (2) of subsection (a) of section 19a-486c, as amended by this act,  
46 including disclosure of the terms of any other offers to transfer assets  
47 or operations or change control of operations received by the nonprofit

48 hospital and the reason for rejection of such offers; and (7) such other  
49 information as the commissioner or the Attorney General deem  
50 necessary to their review pursuant to the provisions of sections 19a-486  
51 to 19a-486f, inclusive, as amended, and sections 19a-637 to 19a-639,  
52 inclusive, as amended. The application shall be subject to disclosure  
53 pursuant to section 1-210, as amended.

54 (d) No later than sixty days after the date of mailing of the  
55 application form, the nonprofit hospital and the purchaser shall  
56 concurrently file an application with the commissioner and the  
57 Attorney General containing all the required information. The  
58 commissioner and the Attorney General shall review the application  
59 and determine whether the application is complete. The commissioner  
60 and the Attorney General shall, no later than twenty days after the  
61 date of their receipt of the application, provide written notice to the  
62 nonprofit hospital and the purchaser of any deficiencies in the  
63 application. Such application shall not be deemed complete until such  
64 deficiencies are corrected.

65 (e) No later than twenty-five days after the date of their receipt of  
66 the completed application under this section, the commissioner and  
67 the Attorney General shall jointly publish a summary of such  
68 agreement in a newspaper of general circulation where the nonprofit  
69 hospital is located.

70 (f) Any person may seek to intervene in the proceedings under  
71 section 19a-486e, as amended, in the same manner as provided in  
72 section 4-177a.

73 Sec. 2. Section 19a-486c of the general statutes, as amended by  
74 section 4 of public act 03-73, is repealed and the following is  
75 substituted in lieu thereof (*Effective October 1, 2004*):

76 (a) The Attorney General shall deny an application as not in the  
77 public interest if the Attorney General determines that one or more of  
78 the following conditions exist: (1) The transaction is prohibited by  
79 Connecticut statutory or common law governing nonprofit entities,

80 trusts or charities; (2) the nonprofit hospital failed to exercise due  
81 diligence in (A) deciding to transfer, (B) selecting the purchaser, (C)  
82 obtaining a fairness evaluation from an independent person expert in  
83 such agreements, or (D) negotiating the terms and conditions of the  
84 transfer; (3) the nonprofit hospital failed to disclose any conflict of  
85 interest, including, but not limited to, conflicts of interest pertaining to  
86 board members, officers, key employees and experts of the hospital,  
87 the purchaser or any other party to the transaction; (4) the nonprofit  
88 hospital will not receive fair market value for its assets, which, for  
89 purposes of this subsection, means the most likely price that the assets  
90 would bring in a sale in a competitive and open market under all  
91 conditions requisite to a fair sale, with the buyer and seller each acting  
92 prudently, knowledgeably and in their own best interest, and with a  
93 reasonable time being allowed for exposure in the open market; (5) the  
94 fair market value of the assets has been manipulated by any person in  
95 a manner that causes the value of the assets to decrease; (6) the  
96 financing of the transaction by the nonprofit hospital will place the  
97 nonprofit hospital's assets at an unreasonable risk; (7) any  
98 management contract contemplated under the transaction is not for  
99 reasonable fair value; (8) a sum equal to the fair market value of the  
100 nonprofit hospital's assets (A) is not being transferred to one or more  
101 persons to be selected by the superior court for the judicial district  
102 where the nonprofit hospital is located who are not affiliated through  
103 corporate structure, governance or membership with either the  
104 nonprofit hospital or the purchaser, unless the nonprofit hospital  
105 continues to operate on a nonprofit basis after the transaction and such  
106 sum is transferred to the nonprofit hospital to provide health care  
107 services, and (B) is not being used for one of the following purposes: (i)  
108 For appropriate charitable health care purposes consistent with the  
109 nonprofit hospital's original purpose, (ii) for the support and  
110 promotion of health care generally in the affected community, or (iii)  
111 with respect to any assets held by the nonprofit hospital that are  
112 subject to a use restriction imposed by a donor, for a purpose  
113 consistent with the intent of said donor; [or] (9) the transaction,  
114 together with previous transfers of assets, operations or control from

115 the nonprofit hospital to an organization or organizations organized or  
116 operated for profit, constitutes the transfer of a material amount of  
117 assets, operation or change in control of such nonprofit hospital; or (10)  
118 the nonprofit hospital or the purchaser has failed to provide the  
119 Attorney General with information and data sufficient to evaluate the  
120 proposed agreement adequately, provided the Attorney General has  
121 notified the nonprofit hospital or the purchaser of the inadequacy of  
122 the information or data and has provided a reasonable opportunity to  
123 remedy such inadequacy.

124 (b) The Attorney General may, during the course of a review  
125 required by section 19a-486b, as amended: (1) Issue in writing and  
126 cause to be served upon any person, by subpoena, a demand that such  
127 person appear before the Attorney General and give testimony or  
128 produce documents as to any matters relevant to the scope of the  
129 review; or (2) issue written interrogatories, to be answered under oath,  
130 as to any matters relevant to the scope of the review and prescribing a  
131 return date that would allow a reasonable time to respond. If any  
132 person fails to comply with the provisions of this subsection, the  
133 Attorney General may apply to the superior court for the judicial  
134 district of Hartford seeking enforcement of the subpoena. The superior  
135 court may, upon notice to such person, issue and cause to be served an  
136 order requiring compliance. Service of subpoenas ad testificandum,  
137 subpoenas duces tecum, notices of deposition and written  
138 interrogatories as provided in this subsection may be made by  
139 personal service at the usual place of abode or by certified mail, return  
140 receipt requested, addressed to the person to be served at such  
141 person's principal place of business within or without this state or such  
142 person's residence.

143 (c) The Attorney General may contract with experts or consultants  
144 to assist in reviewing the proposed agreement, including, but not  
145 limited to, assistance in independently determining the fair market  
146 value of the nonprofit hospital's assets. The Attorney General may  
147 appoint, or contract with, another person to conduct the review  
148 required by this section and make recommendations to the Attorney

149 General. The Attorney General shall submit any bills for such contracts  
150 to the purchaser. The purchaser shall pay such bills within thirty days  
151 of receipt. Such bills shall not exceed three hundred thousand dollars.

152 Sec. 3. Subsection (a) of section 19a-486d of the general statutes, as  
153 amended by section 5 of public act 03-73, is repealed and the following  
154 is substituted in lieu thereof (*Effective October 1, 2004*):

155 (a) The commissioner shall deny an application filed pursuant to  
156 subsection (d) of section 19a-486a, as amended by this act, unless the  
157 commissioner finds that: (1) The affected community will be assured of  
158 continued access to affordable health care; (2) in a situation where the  
159 asset or operation to be transferred provides or has provided health  
160 care services to the uninsured or underinsured, the purchaser has  
161 made a commitment to provide health care to the uninsured and the  
162 underinsured; (3) in a situation where health care providers or insurers  
163 will be offered the opportunity to invest or own an interest in the  
164 purchaser or an entity related to the purchaser safeguard procedures  
165 are in place to avoid a conflict of interest in patient referral; and (4)  
166 certificate of need authorization is justified in accordance with sections  
167 19a-637 to 19a-639, inclusive, as amended. The commissioner may  
168 contract with any person, including, but not limited to, financial or  
169 actuarial experts or consultants, or legal experts with the approval of  
170 the Attorney General, to assist in reviewing the completed application.  
171 The commissioner shall submit any bills for such contracts to the  
172 purchaser. Such bills shall not exceed one hundred fifty thousand  
173 dollars. The purchaser shall pay such bills no later than thirty days  
174 after the date of receipt of such bills.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>

**FIN**            *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 05 \$	FY 06 \$
Attorney General	GF - None	None	None
Health Care Access, Off.	GF - Cost	Potential	Potential
Health Care Access, Off.	GF - Revenue Gain	Potential	Potential
UConn Health Ctr.	Various - Cost	Potential	Potential

Note: GF=General Fund

**Municipal Impact:** None

#### **Explanation**

The bill specifies that the Attorney General must consider whether or not a proposed transfer of assets or operations between a nonprofit hospital and a purchaser results in a change in control to a person organized or operated for profit as part of his review to determine if the proposed transfer requires approval by the Office of the Attorney General (OAG) and the Commissioner of Health Care Access. It requires that the Attorney General's consideration take into account both the current proposal and any previous transfers of assets, operations or control by the same hospital. The bill also modifies the statutory criteria used by the Attorney General to determine if a proposed transfer is in the public interest, and thereby approve or deny it. These changes would not substantially affect the workload of the Office of the Attorney General and, consequently, there is no related fiscal impact to the agency.

A potential cost may result for the Office of Health Care Access (OHCA) to the extent that the agency may have to conduct additional mandated reviews of proposed agreements in response to a provision of the bill allowing the Attorney General to consider a current proposal in the context of previous transactions. These potential costs would

depend upon the number of additional proposals determined by the OAG to require OHCA review, which cannot be estimated in advance. Should there be a significant increase in the number of such determinations, additional staff may be needed.

The costs of the operation of the OHCA are recouped by an assessment on hospitals that is deposited as revenues to the General Fund. However, this reimbursement occurs on a lagged basis. Therefore, any additional costs incurred by the Office in the first year of implementation would only be offset by reimbursement of seventy-five percent. As John Dempsey Hospital is subject to the assessment, a share of any resulting additional costs due to the bill would be incurred by the University of Connecticut Health Center.



**OLR Bill Analysis**

sSB 562

**AN ACT CONCERNING THE CONVERSION OF NONPROFIT HOSPITALS****SUMMARY:**

This bill modifies the law on the sale of nonprofit hospitals to a for-profit entity by:

1. requiring the attorney general, when determining if a proposed sale requires approval under the nonprofit conversion law, to consider previous transfers of assets, operations or control by the hospital when examining the current proposal;
2. adding and modifying conditions that, if present, require the Attorney General to disapprove a proposal as not in the public interest; and
3. qualifying an existing condition that requires the Office of Health Care Access (OHCA) to deny a proposal involving services to the uninsured.

EFFECTIVE DATE: October 1, 2004

**ATTORNEY GENERAL DETERMINATION OF NEED FOR APPROVAL; LETTER OF INTENT**

The law requires the purchaser, as well as the nonprofit hospital, to submit a letter of intent to the OHCA commissioner and attorney general for their review. The attorney general must determine if the proposal requires approval under the nonprofit conversion law. If it does, he and the commissioner must give the hospital and the purchaser an application unless OHCA refuses to accept the letter of intent because it is incomplete.

The bill requires the attorney general, when making his determination, also to consider both the amount of assets or operation or change in control involved in the proposal and any previous transfers of assets,

operations, or control by the hospital, that when taken together with the current proposal, would transfer a material amount of assets or operation, resulting in a change of control to a for-profit.

## **APPROVAL OF A PROPOSAL**

The law requires the attorney general and OHCA commissioner to approve a completed application, with or without modification, or deny it within a specified time period. The attorney general must disapprove the proposal as not in the public interest if any of a series of specific conditions are present. One of these conditions is that a sum equal to the fair market value of the hospital's assets is not being transferred to one or more people selected by the Superior Court who are not affiliated through corporate structure, governance, or membership with either the nonprofit hospital or the purchaser.

The bill specifies that this type of transfer is allowed if the nonprofit hospital continues to operate on a nonprofit basis after the transaction and the sum is transferred to the nonprofit to provide health services.

The bill also requires the attorney general to disapprove the proposal if the transfer, together with previous transfers or assets, operations, or control from the nonprofit hospital to a for-profit organization, constitutes transfer of a material amount of the hospital's assets, operation, or change in control.

## **OHCA APPROVAL**

The law directs OHCA to deny an application unless the commissioner makes certain statutorily required findings. One of these is that the purchaser is committed to providing health care to the uninsured and underinsured. The bill qualifies this condition by specifying that it applies in a situation where the asset or operation to be transferred provides or has provided health care services to the uninsured or underinsured.

## **BACKGROUND**

### **Legislative History**

The Senate referred the bill (File 455) to the Finance, Revenue and Bonding Committee on April 14. That committee favorably reported a substitute bill, deleting a provision in the original bill concerning a

hospital's tax-exempt status and management of assets consistent with its charitable purpose.

**COMMITTEE ACTION**

## Public Health Committee

Joint Favorable Substitute

Yea 17      Nay 5

## Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 40      Nay 2